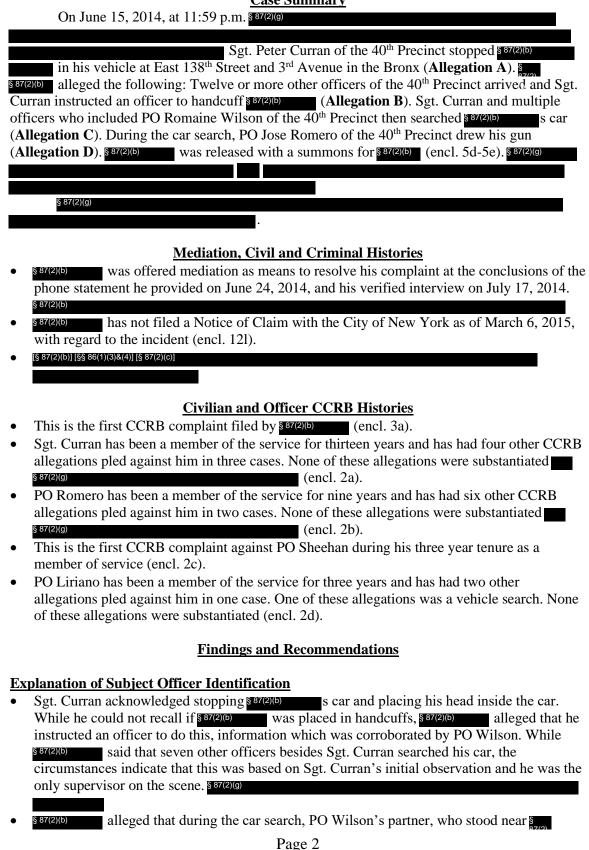
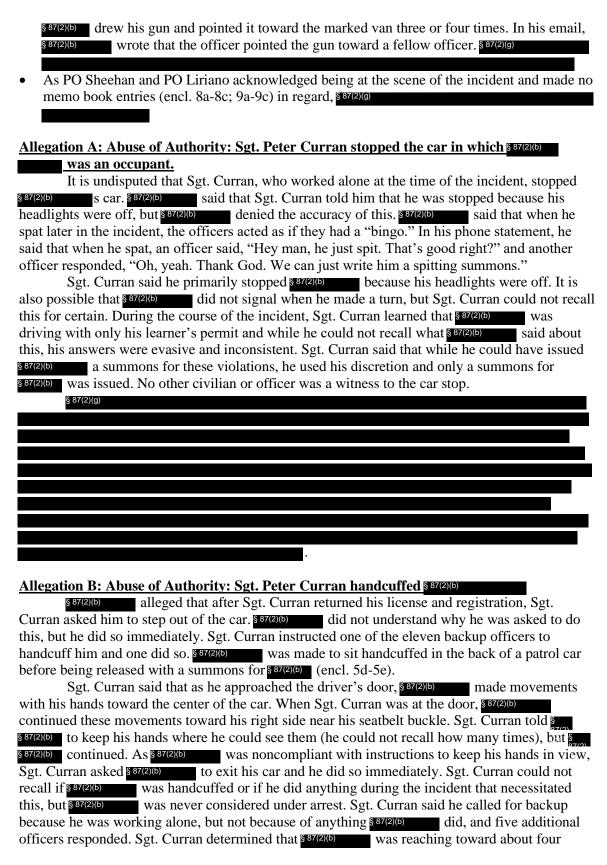
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	☐ U.S.
Leanne Fornelli		Squad #8	201405978	v	Abuse		O.L.	☐ Injury
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Incident Date(s)		Location of Incident:		1	Precinct:		Mo. SOL	EO SOL
Sunday, 06/15/2014 11:59 PM, Monday, 06/16/2014		East 138th Street and 3rd Avenue			40	12	2/15/2015	12/15/2015
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Time	Rece	eived at CCI	RB
Mon, 06/16/2014 1:25 AM		CCRB	On-line website		Mon, 06/1	6/201	14 1:27 AM	ſ
Complainant/Victim	Type	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. SGT Peter Curran	694	928139	040 PCT					
2. POM Jose Romero	18022	940670	040 PCT					
3. POM Michael Sheehan	09074	951242	040 PCT					
4. POM Shawn Liriano	03658	951924	040 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Romaine Wilson	00910	949804	040 PCT					
2. POM Kevin Dempsey	22807	953813	040 PCT					
3. POM Victor Calderin	12315	951579	040 PCT					
Officer(s)	Allegatio	on			Inve	stiga	ator Recon	nmendation
A.SGT Peter Curran		Abuse: Sgt. Peter Curran stopped the car in which §87(2)(b) was an occupant.						
B.SGT Peter Curran	Abuse: S	Abuse: Sgt. Peter Curran handcuffed §87(2)(b)						
C.SGT Peter Curran		Abuse: Sgt. Peter Curran searched the car in which § 87(2)(b) was an occupant.						
D.POM Jose Romero	Abuse: P	Abuse: PO Jose Romero drew his gun.						
§ 87(4-b) § 87(2)(g)								

Case Summary



CCRB Case # 201405978



cartons of cigarettes, which were unremarkable. Although PO Wilson could not recall who handcuffed 887(2)(b) he said that this was done upon Sgt. Curran's instruction to one of the four backup officers, who included PO Wilson, to do so. \$87(2)(b) was not considered under arrest and never exhibited behavior that caused PO Wilson to fear for his safety, but this was done for cautionary measures. PO Romero, PO Sheehan and PO Liriano could not recall \$87(2)(b) being placed in handcuffs. Officers must have a reasonable suspicion of criminal activity to justify the seizure of an individual, People v. De Bour, 386 N.Y.S.2d 375 (June 15, 1976) (encl. 1a-1k). Regarding New York Vehicle and Traffic Law violations, arrests should not involve custodial arrest where the issuance of a summons is an alternative to such arrest, People v. Bradford, 957 N.Y.S.2d 637 (May 21, 2011) (encl. 11-1r). § 87(2)(g) Allegation C: Abuse of Authority: Sgt. Peter Curran searched the car in which Se7(2)(b) was an occupant. said that when he stepped out of his car, he tried to close the door behind him, but Sgt. Curran stopped it from closing and asked him what he had to hide. After was handcuffed and sat in a patrol car, about eight officers who included Sgt. Curran and PO Wilson searched § 87(2)(b) s car in the front and backseats, and in the trunk. The officers found nothing. Sgt. Curran said that as he approached the driver's door, § 87(2)(b) made movements with his hands toward the center of the car. When Sgt. Curran was at the door, \$87(2)(b) continued these movements and they were toward his seatbelt buckle on his right. Although Sgt. Curran told (\$ 97(2)(b) to keep his hands where he could see them (he could not recall how many times), § 87(2)(b) continued the movements. This raised Sgt. Curran's suspicions that a weapon or something that could cause harm to him could be inside the car. He initially said that stepped out or the car, he closed the door behind him, and Sgt. Curran did not ask him to keep the door open or if he had something to hide. He then said the door remained open from when (\$187(2)(5) exited. Sgt. Curran leaned into the driver's door so his head was inside and peered in the area toward which \$87(2)(b) reached. He determined that \$87(2)(b) was reaching toward about four cartons of cigarettes. He did not touch the cigarettes or anything

PO Wilson said that other officers who included Sgt. Curran shone their flashlights into

Page 4 CCRB Case # 201405978

wilson that he found untaxed cigarettes, never suspected \$87(2)(b) of having them and never underwent the training to identify them. He never popped the trunk of the car. He was satisfied after looking inside that there was no weapon in the car. The backup officers who arrived never

entered the car.

s car. No other door besides the driver's door was opened and no compartment within the car was opened. The trunk was never opened. Officers entered the car, but PO Wilson was unsure of who as their backs faced him. He was unsure if Sgt. Curran was one of these officers. PO Wilson did not search any part of \$87(2)(0) s car. After the incident, Sgt. Curran told him that \$87(2)(0) s car was searched because he was trying to hide several cartons of untaxed cigarettes, which made him feel nervous and call for backup. Sgt. Curran mentioned no other reason for the search. No other interviewed officer acknowledged searching the car or seeing another officer do this.

The event chronology for Event D14061527646 (encl. 12a-12b) shows that at 11:59 p.m., Sgt. Curran requested backup and the disposition of summons issued was transmitted at 12:21 a.m. Sgt. Curran's memo book (encl. 6a-6b), which was faxed to the CCRB after his interview, notes that he conducted the car stop at 11:55 p.m. and resumed patrol at 12:20 a.m.

Breaching the plane of a car doorway to peer deeply inside the vehicle constitutes a search, <u>People v. Hernandez</u>, 656 N.Y.S.2d 12 (1st Dept. 1997) (encl. 1s-1t). In order for an officer to search a vehicle without a warrant, there must be probable cause to believe that contraband, evidence of a crime, a weapon or some means of escape lies therein, <u>People v. Smith</u>, 949 N.Y.S.2d 472 (2nd Dept. 2012) (encl. 1u-1v). Furtive movements observed in a car whose driver twice refused to pull over and nearly struck a pedestrian in an attempt to flee created a perceptible risk that a weapon was inside the car and justified only a limited search in the area where the furtive movements had been observed, <u>People v. Mundo</u>, 750 N.Y.S.2d 837 (November 19, 2002) (encl. 1w-1aa). An officer's observation of furtive movements within a car does not alone justify a search of the car if a defendant is in no position to obtain a weapon when a search is conducted, <u>People v. Derrell</u>, 889 N.Y.S.2d 95 (December 3, 2009) (encl. 1bb-1oo).

§ 87(2)(g)	
§ 87(2)(g)	ı

Allegation D: Abuse of Authority: PO Jose Romero drew his gun.

alleged that during the car search, PO Romero, who stood near \$87(2)(b) drew his gun and pointed it toward the marked van three or four times. In his email, \$87(2)(b) wrote that the officer pointed the gun toward a fellow officer.

PO Romero denied drawing his gun and every interviewed officer denied seeing an officer with their gun drawn.

§ 87(2)(g)					

Page 5 CCRB Case # 201405978

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